IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.513 OF 1994

Tukaram Laxman Walunj, since
deceased through his heirs and
L.Rs:

1a. Lahanubai T. Walunj, age 85
b. Baban T. Walunj, age 65
c. Jaiwantabai Shridhar
Takalekar, age 60
d. Kisan T. Walunj, age 58
e. Kausalya Ramkrishna Gawade,
age 53
f. Popat T. Walunj, age 53
g. Ananta T. Walunj, age 49
h. Shantaram T. Walunj, age 45
i. Sopan T. Walunj, age 40

All residing at Waralhi
Bhanburwadi, Post: Rajgurunagar,
Taluka Khed, Pune. .... Petitioners

- Versus -

1. Vishnu Shripati Thigale,
age 60 years

2. Kundlik Shripati Thigale,
age 50 years

Both by Occ: Agr., residing
at Tukai Bhabhurwadi, Tal. Khed,
Dist. Pune. .... Respondents

Shri R.S. Apte for the Petitioners.

Shri U.B. Nighot for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties.

Perused the records.

2. The petitioner challenges the order dated 7-3-1990 passed in Civil Miscellaneous Application No.6 of 1993 by the Civil Judge, Junior Division, at Khed. By the impugned order, the trial Court has restored the suit to its board.

3. The impugned order is sought to be challenged on the ground that the Court below erred in ignoring the fact that the respondents had availed benefits of the order of withdrawal of the suit and therefore the respondents were not entitled to seek restoration of the suit, apart from the fact that there was inordinate delay in filing the application for restoration of the suit.

4. Perusal of the impugned order discloses that the application for restoration was objected to only on two grounds, namely, that the suit was voluntarily withdrawn by the respondents and secondly the application was barred by the law of limitation. The Court below while dealing with the first ground of objection has clearly observed that the application for disposal of the suit was filed on the ground of settlement of the dispute between the parties outside the Court while the suit was disposed of as being not prosecuted. It has also been observed that the application for restoration of the

suit was filed by Advocate Shri V.R. Kale who had no authority to withdraw or get the suit disposed of. As regards the ground of bar of limitation, it has been observed that the records disclose that the respondents had no knowledge of the disposal of the suit and the respondents approached the Court with the application for restoration immediately after they came to know about the disposal of the suit and considering the facts revealed from the records, the order passed disposing the suit for non-prosecution was in clear breach of the procedure as well as contrary to the provisions of law and therefore the order was recalled and the suit has been restored.

5. Perusal of the records apparently disclose that the application which was filed by the Advocate Kale did not bear the signature of any of the respondents/plaintiffs. Besides, the application was on the alleged ground of settlement of the dispute between the parties. Once the settlement between the parties is informed to the trial Court and on that ground the suit is requested to be disposed of, it was necessary for the trial Court to hear the parties and record their statement and to dispose of the suit accordingly. Mere intimation of the alleged settlement between the parties does not empower the Court to dispose of the suit for non-prosecution. Any such order would be contrary to the provisions of

Order 23 of the Code of Civil Procedure. Being so, the order disposing of the suit for non-prosecution, merely because the Court was informed by the Advocate Shri Kale that there was settlement between the parties, was clearly in breach of the procedure and in illegal exercise of jurisdiction by the Court. Hence, the impugned order whereby the trial Court has sought to undo the illegality committed by its earlier order cannot be found fault with and it cannot be said to be an illegal and improper exercise of jurisdiction or even in excess of its jurisdiction. Being so, the impugned order does not warrant any interference in the revisional jurisdiction.

6. As regards the contention about the bar of limitation, apparently the respondents/plaintiffs had no knowledge of the withdrawal of the said suit and therefore the question of bar of limitation does not arise at all. It is to be noted that it was the case of the respondents that the original application for disposal of the suit was not filed by the respondents/plaintiffs, nor the Advocate Shri Kale was instructed or authorised to file any such application nor there was any settlement between the parties. There was also no plea raised by the petitioners about any benefit having been enjoyed by the respondents on account of withdrawal of the suit. This itself

discloses that there was no occasion for the respondents to know about the disposal of the suit during the said period. Being so, there was no case made out by the petitioners to make grievance about the bar of limitation in the application filed by the respondents for restoration of the suit.

7. As regards the contention of the learned Advocate for the petitioners, that the Court below failed to take note of the advantage enjoyed by the respondents pursuant to disposal of the suit, undisputedly, no such plea was raised before the trial Court and the question of entertaining such a plea for the first time in this revision application does not arise at all. The records nowhere disclose any such advantage having been enjoyed by the respondents.

8. The learned Advocate for the petitioners, however, is justified in contending that the Court below has made adverse observations against Advocate Shri K.G. Apte, the Advocate appearing for the defendant in the suit. Indeed merely because the said Advocate had given no objection to the application filed by Advocate Kale, that would not lead to the conclusion that Advocate Apte was in collusion with Advocate Kale in relation to the disposal of the suit. Admittedly, there was no material placed on record to arrive at any such conclusion and

therefore the trial Court was not justified in making any observation against Advocate Shri K.G. Apte who had appeared for the defendant. There is nothing on record to disclose that Advocate K.G. Apte had knowledge about any mischief being played by Advocate Kale in the matter. Hence the observations against Advocate Shri K.G. Apte in the impugned order are to be held as unwarranted and therefore deemed to have been struck-off.

9. Apart from the above observations regarding unwarranted references made against Advocate Shri K.G. Apte in the impugned order, no interference is called for in the impugned order. Hence with the above observations, the petition is rejected. The rule is discharged with no order as to costs.